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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1935.

No. 566

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
*Petitioner,*

*vs.*

WILLIAM B. McILVAINE AND JOHN P. WILSON, JR., TRUSTEES UNDER DEED OF TRUST OF JOHN P. WILSON,
*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

## BRIEF FOR RESPONDENTS.

CLAY JUDSON,
*Counsel for Respondents,*
120 West Adams Street,
Chicago, Illinois.

WILSON & McILVAINE,
*Of Counsel.*

THE DONNELLEY-LAKESIDE PRINTING COMPANY, 350 WEST JACKSON, CHICAGO

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## BRIEF FOR RESPONDENTS.

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The brief for petitioner sufficiently describes the opinions below, the basis of the jurisdiction of this Court, the question presented, and the statutes involved. It also states the facts with sufficient accuracy and detail for the consideration of this case.

## ARGUMENT.

The petitioner states that this case presents the identical question involved in *United States Trust Company of New York, Trustee Under Deed of Trust of John P. Wilson,* v. *Helvering, Commissioner,* now pending in this Court, No. 169, October Term, 1935, on certiorari to the Circuit Court of Appeals for the Second Circuit.

Respondents agree that the same question is presented in both cases, namely, whether there is one trust or three trusts, and that there is no material difference in the facts presented or in the documents to be interpreted by the Court.

Respondents therefore adopt and incorporate herein by reference the arguments presented in the petition for writ of certiorari, the brief in support thereof, and the reply brief on the merits filed on behalf of petitioner in *United States Trust Company of New York, Trustee under Deed of Trust of John P. Wilson,* v. *Helvering, Commissioner, supra.*

Respondents only desire to add one comment in this brief. It is the viewpoint of respondents that these two cases are substantially identical in every respect. They were also considered to be substantially identical by the Circuit Court of Appeals for the Seventh Circuit in the instant case.

The Government in its last brief in the United States Trust Company case, bases its argument in large part on the fact that the first amendment to the trust indenture in that case, which first divided the single trust estate, did not accomplish a separation of the estate into three trusts because it did not actually contain the words "which trust estates" or "the three estates", but used instead

the words "parts or shares". That argument can have no application to the instant case. The first amendment here contained a paragraph identical in phraseology with that appearing in the first amendment in the United States Trust Company case with respect to the division of the trust estate into separate parts or shares. The first amendment here, however, included other paragraphs which repeatedly contained phrases such as "the separate trust estates", "said separate trust estates", "the three trust estates", etc. The argument made on this point by the Government in the United States Trust Company case can not be made here.

We again repeat that in the view of respondents there is no substantial distinction between the two cases. Respondents believe that in both cases the language used in the amended instruments is plain and clearly expresses the intention of the parties to create separate trusts. Since Congress has seen fit to tax the accumulations in separate trusts separately, they must be so taxed, both in the United States Trust Company case and in the instant case.

Respectfully submitted,

CLAY JUDSON,
*Counsel for Respondents.*

WILSON & MCILVAINE,
*Of Counsel.*